



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA-HQ-OAR-2011-0028; FRL-9614-9]

RIN 2060-AQ70

Proposed Confidentiality Determinations for Data Elements under the Mandatory Reporting of Greenhouse Gases Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action re-proposes confidentiality determinations for the data elements under the Mandatory Greenhouse Gas Reporting Rule. On July 7, 2010, EPA proposed confidentiality determinations for data elements and is issuing this re-proposal today due to significant changes to certain data elements. In addition, EPA is proposing confidentiality determinations for seven new data elements that are not inputs to equations. EPA is also proposing to categorize three data elements as inputs to emission equations and to defer their reporting deadline to March 31, 2013.

DATES: Comments. Comments must be received on or before [INSERT THE DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS PROPOSED RULE IN THE FEDERAL REGISTER].

Public Hearing. EPA does not plan to conduct a public hearing unless requested. To request a hearing, please

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by [INSERT THE DATE 7 DAYS AFTER THE DATE OF PUBLICATION OF THIS PROPOSED RULE IN THE FEDERAL REGISTER]. Upon such request, EPA will hold the hearing on [INSERT THE DATE 15 DAYS AFTER THE DATE OF PUBLICATION OF THIS PROPOSED RULE IN THE FEDERAL REGISTER] in the Washington, DC area starting at 9 a.m., local time. EPA will publish further information about the hearing in the Federal Register if a hearing is requested.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-0028, by one of the following methods:

- Federal eRulemaking Portal:
<http://www.regulations.gov>. Follow the online instructions for submitting comments.
- E-mail: GHGReportingCBI@epa.gov
- Fax: (202) 566-1741.
- Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode 6102T, Attention Docket ID No. EPA-HQ-OAR-2011-0028, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.

EPA-HQ-OAR-2011-0028. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

<http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA-HQ-OAR-2011-0028. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid

the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343-9263; fax number: (202) 343-2342; e-mail address: GHGreporting@epa.gov. For technical information, contact the Greenhouse Gas Reporting Rule Hotline at:

http://www.epa.gov/climatechange/emissions/ghgrule_contactus.htm. Alternatively, contact Carole Cook at 202-343-9263.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposal, memoranda to the docket, and all other related information will also be available through the WWW on EPA's greenhouse gas reporting rule website at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

BAMM	Best Available Monitoring Methods
CAA	Clean Air Act
CEMS	continuous emission monitoring system
CO ₂	carbon dioxide
CBI	confidential business information
CEMS	Continuous Emission Monitoring System
CFR	Code of Federal Regulations
EIA	Energy Information Administration
EOR	enhanced oil recovery
EPA	U.S. Environmental Protection Agency
F-GHG	fluorinated greenhouse gas
GHG	greenhouse gas
ICR	Information Collection Request
LDC	local natural gas distribution company
LNG	liquefied natural gas
MMBtu	million Btu
MMscfd	million standard cubic feet per day

MRV	monitoring, reporting, and verification
NESHAP	national emission standards for hazardous air pollutants
N ₂ O	nitrous oxide
NTTAA	National Technology Transfer and Advancement Act of 1995
OMB	Office of Management & Budget
PFC	perfluorocarbon
R&D	research and development
RFA	Regulatory Flexibility Act
SF ₆	sulfur hexafluoride
UIC	Underground Injection Control
UMRA	Unfunded Mandates Reform Act of 1995
U.S.	United States
WWW	Worldwide Web

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I. General Information

A. What is the purpose of this action?

This action has three purposes. First, EPA is re-proposing confidentiality determinations for the data elements in six subparts (L, DD, QQ, RR, SS, and UU) of 40 CFR part 98 of the Mandatory Greenhouse Gases Reporting rule (hereafter referred to as "Part 98"). EPA proposed confidentiality determinations for data elements contained in the proposed subparts L, DD, QQ, RR, and SS in the July 7, 2010 proposed CBI determination notice (75 FR 39094; hereinafter referred to as the "July 7, 2010 CBI proposal"). These subparts were finalized in December of

2010 as part of two separate amendments to Part 98. As explained in more detail in Section II.C of this preamble, many data elements were added or significantly changed since proposal, and portions of proposed subpart RR were split off to create a new subpart UU. Additionally, on November 29, 2011, EPA finalized amendments to subpart RR. See "2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of The Mandatory Reporting of Greenhouse Gases Rule" (76 FR 73886; hereinafter referred to as the "Technical Corrections final rule"). In light of the above, we are re-proposing for public comment the confidentiality determinations for the data elements in these six subparts to reflect the data elements in the final six subparts and the new and revised data elements in subpart RR in the Technical Corrections final rule.

On May 26, 2011, EPA published the final CBI determinations for 35 Part 98 subparts in "Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act" (76 FR 30782; hereinafter referred to as the "Final CBI Rule"). In that rule, we created 22 data categories (11 for direct emitters of greenhouse gases (GHGs) and 11 for suppliers of GHGs and products containing

GHGs) and assigned data elements in the 35 subparts to appropriate data categories. In today's action, we similarly propose to assign the data elements in the six subparts into the appropriate data categories created in the Final CBI Rule. For a list of the data categories, see Section III.A of this preamble. This notice covers all of the data elements from the six subparts except for those that are in the "Inputs to Emission Equations" data category. The covered data elements and their proposed category assignments are listed by data category in the Memorandum entitled "Docket EPA-HQ-OAR-2011-0028 Memo A." This memorandum reflects the proposed revisions in the Technical Corrections final rule.

As in the Final CBI Rule, this proposal does not address data elements from the six subparts in the "Inputs to Emission Equations" data category. Those data elements were identified in "Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule," published on August 25, 2011 (76 FR 53057; hereinafter referred to as the "Final Deferral"). In that action, EPA deferred the deadline for direct emitter reporters to report "Inputs to Emission Equations" data elements. EPA deferred the deadline for reporting some of these data elements to March

31, 2013, and the deadline for reporting others to March 31, 2015. For easy reference, we have placed a list of the data elements in these six subparts that are assigned to the "Inputs to Emission Equations" data category in the docket for today's action ("Docket EPA-HQ-OAR-2011-0028 Memo B").

The second purpose of this action is to propose confidentiality determinations for new data elements (that are not inputs to equations) added to subparts II and TT in the Technical Corrections final rule (76 FR 73886). Subparts II and TT were originally finalized in July of 2010. Confidentiality determinations for the finalized data elements in these two subparts were included in the Final CBI Rule; however, in the Technical Corrections final rule that was issued after the Final CBI Rule, certain existing data elements were revised and certain new data elements were added. As discussed in Section I.D of this preamble, the revisions do not change the information to be reported and therefore do not affect the final confidentiality determinations for those data elements. However, the Final CBI Rule does not address the new data elements for these two subparts. Therefore, we are proposing confidentiality determinations in this action for the new subpart II and TT data elements added in the

Technical Corrections final rule. The new subpart II and TT data elements and their proposed category assignments are listed by data category in Section IV of this preamble.

The third purpose of this action is to propose amendments to Table A-6 to subpart A of Part 98 to reflect amendments in the Technical Corrections final rule (76 FR 73886). In the Technical Corrections final rule, three new equation inputs are added to subparts FF and TT. In this action, EPA is proposing to defer the reporting deadline for these three equation inputs to March 31, 2013. As with other equation inputs, EPA is in the process of evaluating the sensitivity of these three equation inputs, and we believe that we can complete our evaluation before March 31, 2013, the current reporting deadline for the equation inputs listed in Table A-6 of Subpart A. EPA is therefore proposing to add these inputs to Table A-6 to require their reporting by March 31, 2013. Additionally, in the Technical Corrections final rule, certain existing equation inputs were revised, including three subpart TT equation inputs for which the section references were re-numbered. As discussed further in Section I.D of this preamble, the revisions to the equation inputs are technical or editorial in nature and do not affect the information to be collected. However, Table A-6 does not currently account

for the re-numerations. Therefore, we are proposing to revise section references to the three subpart TT inputs to equations in Table A-6 as finalized in the Technical Corrections final rule.

B. Does this action apply to me?

This proposal affects entities required to submit annual GHG reports under certain subparts of Part 98. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). Part 98 and this action affect owners and operators of fluorinated gas production facilities, electric power systems, electrical equipment manufacturing facilities, carbon dioxide (CO₂) enhanced oil and gas recovery projects, acid gas injection projects, geologic sequestration projects, importers and exporters of pre-charged equipment and closed-cell foams, industrial wastewater treatment facilities, underground coal mines, and industrial waste landfills. Affected categories and entities include those listed in Table 1 of this preamble.

Table 1. Examples of Affected Entities by Category

Category	NAICS	Examples of affected facilities
Fluorinated Gas Production	325120	Industrial gases manufacturing facilities.

Category	NAICS	Examples of affected facilities
Electrical Equipment Use	221121	Electric bulk power transmission and control facilities.
Electrical Equipment Manufacture or Refurbishment	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air-conditioning equipment (except motor vehicle) manufacturing.
	336391	Motor vehicle air-conditioning manufacturing.
	423620	Air-conditioners, room, merchant wholesalers.
	443111	Household appliance stores.
	423730	Automotive air-conditioners merchant wholesalers.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers merchant wholesalers.
CO ₂ Enhanced Oil and Gas Recovery Projects	211	Oil and gas extraction projects using CO ₂ enhanced recovery.
Acid Gas Injection Projects	211111 or 211112	Projects that inject acid gas containing CO ₂ underground.
Geologic Sequestration Projects	N/A	CO ₂ geologic sequestration projects.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Industrial Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.

Category	NAICS	Examples of affected facilities
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
	324110	Petroleum refineries.
Industrial Waste Landfills	562212	Solid waste landfills.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	221320	Sewage treatment facilities.

Table 1 of this preamble lists the types of entities that potentially could be affected by the reporting requirements under the nine subparts covered by this proposal. However, this list is not intended to be exhaustive, but rather provides a guide for readers regarding facilities and suppliers likely to be affected by this action. Other types of facilities and suppliers not listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A as well as 40 CFR part 98 subparts L, DD, FF, II, QQ, RR, SS, TT, and UU.

If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

C. What should I consider as I prepare my comments to EPA?

1. Submitting CBI.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI to only the mail or hand/courier delivery address listed above, attention: Docket ID No. EPA-HQ-OAR-2011-0028.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in

the "**FOR FURTHER INFORMATION CONTACT**" section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

Identify the rulemaking by docket number and other identifying information (e.g., subject heading, Federal Register date and page number).

Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

Explain why you agree or disagree, and suggest alternatives and substitute language for your requested changes.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow us to reproduce your estimate.

Provide specific examples to illustrate your concerns and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your information and comments by the comment period deadline identified in the preceding section titled **DATES**. To ensure proper receipt by EPA, be

sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207-J, Washington, DC, 20460, telephone (202) 343-9263, e-mail GHGReportingCBI@epa.gov. You are also encouraged to send a separate copy of your CBI information to Carole Cook at the provided mailing address in the **FOR FURTHER INFORMATION CONTACT** section. Please do not send CBI to the electronic docket or by email.

II. Background and General Rationale

A. Background

On October 30, 2009, EPA published the Mandatory GHG Reporting Rule for collecting information regarding GHGs from a broad range of industry sectors (74 FR 56260). Under Part 98 and its subsequent amendments, certain facilities and suppliers above specified thresholds are required to report GHG information to EPA annually. For facilities, this includes those that directly emit GHGs

("direct emitters") and those that geologically sequester or otherwise inject CO₂ underground. For suppliers, this includes those that supply certain products that would result in GHG emissions if released, combusted, or oxidized ("suppliers"). The data to be reported consist of GHG emission and supply information as well as other data, including information necessary to characterize, quantify, and verify the reported emissions and supplied quantities. In the preamble to Part 98, we stated, "Through a notice and comment process, we will establish those data elements that are 'emissions data' and therefore [under CAA section 114(c)] will not be afforded the protections of CBI. As part of that exercise, in response to requests provided in comments, we may identify classes of information that are not emissions data, and are CBI" (74 FR 56287, October 30, 2009).

On July 7, 2010, (75 FR 39094) EPA proposed confidentiality determinations for Part 98 data elements and proposed amending EPA's regulation for handling CBI to add specific procedures for the treatment of Part 98 data. The July 7, 2010 CBI proposal proposed confidentiality status determinations for the data elements for 31 subparts included in the 2009 final Part 98 rule (see 74 FR 56260, October 30, 2009), four subparts finalized in July 2010

(see 75 FR 39736, July 12, 2010), and seven new subparts that had been proposed but not yet finalized as of July 2010 (see 75 FR 18576, 75 FR 18608, and 75 FR 18652, April 12, 2010). The July 7, 2010 CBI proposal also covered proposed changes to the reporting requirements for some of the Part 98 subparts finalized in October 2009. These changes were proposed in two separate rulemakings (see 75 FR 18455, April 12, 2010; and 75 FR 33950, June 15, 2010).

On August 11, 2010, EPA published another proposed amendment to Part 98 to change the description of some reported data elements and require reporting of some new data elements for some of the Part 98 subparts finalized in October 2009 (75 FR 48744; hereinafter referred to as the "August 11, 2010 revisions proposal"). EPA issued a supplemental CBI proposal that proposed confidentiality determinations for the new and revised data elements included in the August 11, 2010 revisions notice (75 FR 43889, July 27, 2010; hereinafter referred to as the "July 27, 2010 supplemental CBI proposal").

On May 26, 2011, EPA published the Final CBI Rule for the data elements in 35 Part 98 subparts that were covered in the July 2010 proposals, except for those data elements in the "Inputs to Emission Equations" data category. In that final rule, EPA created 22 data categories (11 for

direct emitters and 11 for suppliers) and assigned data elements in the 35 subparts to appropriate data categories. For 16 data categories (eight direct emitter data categories and eight supplier data categories), EPA issued a category-based final CBI determination for all data elements within the category. For another five data categories (two direct emitter data categories and three supplier data categories), EPA determined that they are not "emission data" under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98. However, for the reasons explained in the preamble to that rule, EPA did not make categorical CBI determination for these five data categories but instead evaluated and determined for individual data elements in these data categories whether they qualify as CBI. As a result, each of these five categories contains both data elements determined to be CBI and those determined not to be CBI. As explained in more detail in Section II.B of this preamble, we did not take final action with respect to the data elements in the remaining one of the 22 data categories addressed in that rule: the "Inputs to Emission Equations" data category.

In the May 26, 2011 Final CBI Rule, EPA did not finalize confidentiality determinations for the data

elements in five subparts that had been proposed or re-proposed at the time of the July 7, 2010 CBI proposal (subparts L, DD, QQ, RR, and SS). EPA finalized those five subparts and subpart UU¹ in two separate actions. On December 1, 2010, we finalized subparts L, DD, QQ, and SS (75 FR 74774), and subparts RR and UU (75 FR 75060). As explained in Section II.D of this preamble, on November 29, 2011, we published the Technical Corrections final rule that included, among other things, revisions to some subpart RR data elements (76 FR 73886).

The six affected subparts are as follows:

- Subpart L, Fluorinated Gas Production
- Subpart DD, Electrical Transmission and Distribution Equipment Use
- Subpart QQ, Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-charged Equipment or Closed-cell Foams
- Subpart RR, Geologic Sequestration of Carbon Dioxide
- Subpart SS, Electrical Equipment Manufacture or Refurbishment
- Subpart UU, Injection of Carbon Dioxide.

¹ EPA initially proposed subparts RR and UU as a single subpart (subpart RR); however, as a result of public comments on subpart RR, EPA moved all definitions, requirements, and procedures for facilities conducting only CO₂ injection (without geologic sequestration) into a new subpart (subpart UU). Subpart RR retained all definitions, requirements, and procedures related to facilities conducting geologic sequestration.

As explained in more detail in Section II.C of this preamble, EPA is re-proposing confidentiality determinations for the data elements in these six subparts.

The Technical Corrections final rule also contains technical corrections, clarifying and other amendments for four additional subparts that were covered by the Final CBI Rule and the Final Deferral. As explained in more detail in Section II.D of this preamble, the revisions to the existing data elements in these subparts that are not inputs to emission equations do not change the information to be collected and therefore do not affect the confidentiality determinations made in the Final CBI Rule. However, the Technical Corrections final rule also added new data elements that are not inputs to emission equations for subparts II and TT. EPA is proposing confidentiality determinations in this action for these new data elements.

As further explained in Section II.D of this preamble, the revisions to the existing data elements in these subparts that are inputs to emission equations do not change the information to be collected and therefore generally do not affect Tables A-6 and A-7 to subpart A of Part 98, which were finalized in the Final Deferral to defer the reporting deadline for inputs to emission equations to March 31, 2013, and March 31, 2015,

respectively. The one exception is that certain revisions in the Technical Corrections final rule do re-numerate some subpart TT inputs, so EPA is proposing to amend Table A-6 in this action to reflect this re-numeration. The Technical Corrections final rule also added new data elements that are inputs to emission equations for subparts FF and TT. EPA is proposing to defer the reporting deadline for these subpart FF and TT inputs to March 31, 2013. To accomplish this, EPA is proposing to amend Table A-6.

The three affected subparts are as follows:

- Subpart FF, Underground Coal Mines.
- Subpart II, Industrial Wastewater Treatment.
- Subpart TT, Industrial Waste Landfills.

B. Background on data elements in the "inputs to emission equations" data category

EPA received numerous public comments on the July 7, 2010 CBI proposal and the July 27, 2010 supplemental CBI proposal. In particular, EPA received comments that raised serious concerns regarding the public availability of data in the "Inputs to Emission Equations" category. In light of some of the comments on inputs to emission equations, EPA took three concurrent actions, which are as follows:

- Call for Information: Information on Inputs to Emission Equations under the Mandatory Reporting of Greenhouse Gases Rule, 75 FR 81366 (December 27, 2010).
- Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule; Proposed Rule, 75 FR 81350 (December 27, 2010) ("proposed deferral").
- Interim Final Regulation Deferring the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule, 75 FR 81338 (December 27, 2010) ("interim final rule").

As explained in the proposed deferral notice, EPA has determined that some of the comments on inputs to emission equations "warrant in-depth evaluation of the potential impact from the release of inputs to emission equations, as well as collection and review of additional information, that cannot be completed before the March 31, 2011 reporting deadline" (75 FR 81350, 81353). We therefore issued the proposed deferral to defer the reporting deadline for data elements that are inputs to emission equations. Because EPA needed time to complete the deferral rulemaking, EPA concurrently issued the interim final rule to defer reporting of inputs to emission equations to August 31, 2011.² EPA also concurrently issued the call for information to collect additional information that will assist EPA with the evaluation described above.

² The reporting deadline for year 2010 data required under the Mandatory Reporting of Greenhouse Gases Rule has since been extended to September 30, 2011. See 76 FR 14812 (March 18, 2011).

Please see the December 27, 2010 notices for these three actions for further details on these actions.

On August 25, 2011, EPA published the Final Deferral ("Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule"; 76 FR 53057). In that action, EPA deferred the deadline for direct emitter reporters to report "Inputs to Emission Equations" data elements. EPA deferred the deadline for reporting some of these data elements to March 31, 2013, and others to March 31, 2015. Data elements with the March 31, 2013, reporting deadline are identified in Table A-6 to subpart A and those with the March 31, 2015, reporting deadline are identified in Table A-7 to subpart A.

As explained further in Section II.D of this preamble, the tables in the Final Deferral do not reflect the changes or additions to inputs to equations in the Technical Corrections final rule. EPA is therefore proposing to amend Table A-6 to require reporting of the new inputs by March 31, 2013, and to re-numerate certain section references as finalized in the Technical Corrections final rule.

C. What is the rationale for re-proposing the CBI determinations for six subparts?

EPA included the data elements in the proposed subparts L, DD, QQ, RR, and SS in the July 7, 2010 CBI proposal because EPA did not anticipate any significant change to these data elements when finalizing these subparts. However, EPA received comments on these proposed subparts recommending significant changes to some of the data elements in these subparts. In addition, EPA received numerous comments on the July 7, 2010 CBI proposal requesting another opportunity to comment on the final set of data elements in these six subparts after their promulgation. After the subparts were promulgated, EPA evaluated the changes made between proposal and promulgation. It was clear that there were significant changes to the data elements in these subparts since proposal. There were changes in the types of data to be submitted, and new data elements were added. The changes also included definition changes and clarifications as well as technical changes that affected many of the data reporting categories and data elements. Further, we split off portions of the proposed subpart RR and created a new subpart UU. Given these significant changes, EPA agreed that an opportunity to comment on the confidentiality of data elements in these final six subparts is warranted. EPA is therefore re-proposing the confidentiality

determinations for the data elements in the final six subparts.

Because this is a re-proposal, EPA is not responding to previous comments submitted on the July 7, 2010 CBI proposal relative to the data elements in these subparts. Although EPA considered those comments when developing this re-proposal, we encourage you to resubmit such comments to ensure their consideration and response by EPA in this rulemaking. In resubmitting previous comments, please make any necessary changes to clarify that you are addressing the re-proposal and add details as requested above.

D. How does the Technical Revisions Final Rule affect this action?

On, November 29, 2011, EPA finalized technical corrections, clarifying and other amendments to subparts W, FF, II, OO, RR, and TT of Part 98 in the Technical Corrections final rule (76 FR 73886). The final rule includes minor wording clarifications and editorial corrections to 44 data elements in subpart RR, which do not change the information to be reported to EPA. For example, several subpart RR data elements were revised to correct a rule citation, such as from paragraph (a)(5) to (a)(4). In this action, our confidentiality determination re-proposal includes the 44 data elements in subpart RR as revised in

the Technical Corrections final rule. Because the revisions do not change the information to be collected under this subpart, we believe that it is appropriate to propose confidentiality determinations for these 44 data elements as finalized in the Technical Corrections final rule.

The Technical Corrections final rule similarly includes revisions to seventeen data elements in subparts FF, II, OO, and TT that are minor wording clarifications and editorial corrections. As mentioned in Section II.B of this preamble, on May 28, 2011, EPA issued final confidentiality determinations for all non-input data elements in 35 subparts in part 98, including these 17 data elements in subparts FF, II, OO, and TT. The revisions to the 17 data elements in these four subparts do not change the information to be reported to EPA under these requirements and therefore do not affect the May 26, 2011, final confidentiality determinations for these 17 data elements. We are not addressing these revisions in this action.

In addition to the technical corrections described above, the Technical Corrections final rule includes adding seven new non-input data elements to subparts II and TT. Because these new data elements were finalized after EPA's

issuance of the final confidentiality determinations for data elements in subparts II and TT and therefore not covered by that action, we are proposing confidentiality determinations for these seven data elements in this action. We followed the same approach to category selection and confidentiality determinations as was finalized in the Final CBI Rule and as is followed for the six subparts in this action.

The Technical Corrections final rule also revises 21 existing inputs to equations in subparts FF, II, and TT. The revisions do not change the information to be reported to EPA under these requirements. For 18 of the 21 inputs, the revisions do not affect the August 25, 2011, final deferral. For the other three inputs, however, the revisions do re-numerate section references to three subpart TT equation inputs. These equation inputs were added in the August 25, 2011, final deferral to Table A-6 to subpart A of part 98, which lists by section the inputs to equations to be reported by March 31, 2013. We are therefore proposing in this action to amend Table A-6 to re-numerate three subpart TT equation inputs as finalized in the Technical Corrections final rule.

Lastly, in the Technical Corrections final rule, two new equation inputs were added to subpart FF and one new

equation input was added to subpart TT. In this action, EPA is proposing to defer the reporting deadline for these three equation inputs to March 31, 2013. As with other equation inputs, EPA is in the process of evaluating the sensitivity of these three equation inputs, and we believe that we can complete our evaluation before March 31, 2013, the current reporting deadline for the equation inputs listed in Table A-6 of Subpart A. EPA is therefore proposing to add these inputs to Table A-6 to require their reporting by March 31, 2013. In the Technical Corrections final rule, we added the two new subpart FF inputs to equations to the reporting requirements at 40 CFR part 98.326(o). This regulatory paragraph is already included in Table A-6 to subpart A for reporting by March 31, 2013, so we are not proposing in this action to amend Table A-6 to account for the new subpart FF inputs to equations. However, the new subpart TT equation input is not yet included in Table A-6. We are therefore proposing in this action to amend Table A-6 to add it and require its reporting by March 31, 2013.

III. Re-Proposal of CBI Determinations for Six Subparts

A. Overview

We propose to apply categorical confidentiality determinations made in the Final CBI Rule to the data

elements in these six subparts that are assigned to those categories. In this section, we are requesting comment on two aspects of this proposal. First, we seek comment on the proposed data category assignment for each of these data elements. Second, for those data elements assigned to the five data categories without categorical CBI determinations, we seek comment on the individual confidentiality determinations we are proposing for these data elements.

In the Final CBI Rule, EPA created 22 data categories and assigned data elements in 35 subparts to appropriate data categories. In this re-proposal, EPA similarly proposes to assign each data element in the final subparts L, DD, QQ, RR, SS, and UU to one of 21 data categories³ based on the type and characteristics of the data element. For example, data elements that refer to the amount and composition of raw material (excluding fuel) consumed as inputs to the production process have been assigned to the "Raw Materials Consumed That Are Not Inputs to Emission Equations" data category. For a list of the proposed category assignments (excluding inputs to emission

³ As previously mentioned, this proposal does not address data elements in the "Inputs to Emission Equations" data category. For data elements in these seven subparts that are assigned to the "Inputs to Emission Equations" category, please see the Memorandum entitled "[Docket EPA-HQ-OAR-2011-0028 Memo B]."

equations) for the data elements in these subparts, please see the Memorandum entitled "Docket EPA-HQ-OAR-2011-0028 Memo A." Because the data categories created in the Final CBI Rule are sufficient in scope to cover the data elements in these six subparts, no new data categories are being proposed. For a description of each data category and the type and characteristics of data elements assigned to them, please see Sections II.C and II.D of the July 7, 2010 CBI proposal.

As mentioned earlier in this preamble and shown in Tables 2 and 3 of this preamble, in the Final CBI Rule, EPA made categorical confidentiality determinations (i.e., one determination that applies to all data elements in that category) for 16 data categories (eight direct emitter data categories and eight supplier data categories). For the remaining five data categories (two direct emitter data categories and three supplier data categories), EPA determined that they are not "emission data" for purposes of determining GHG emission to be reported under Part 98 data elements but did not make categorical determinations regarding their CBI status. The final categorical determinations described above would apply to the data elements in the six subparts that EPA assigns to these categories through this rulemaking. We are soliciting

comments on the proposed category assignments for the data elements in these six subparts. If you believe that EPA has improperly assigned certain data elements in these six subparts to the data categories, please provide specific comments identifying which data elements may be mis-assigned along with a detailed rationale for why they are not correctly assigned and in which data category they belong. In addition, if you believe that a data element should be assigned to one of the five categories that do not have a categorical confidentiality determination, please also provide specific comment along with detailed rationale and supporting information on whether such data element does or does not qualify as CBI.

As mentioned above, for five data categories (two direct emitter data categories and three supplier data categories), we determined in the Final CBI Rule that the data elements assigned to these data categories are not emission data for purposes of determining the GHG emissions to be reported under Part 98. However, for the reasons stated in the preambles to the proposed and the Final CBI Rule, we made final CBI determinations for individual data elements assigned to those categories. In making these individual CBI determinations, we considered the confidentiality determination criteria at 40 CFR 2.208, in

particular whether release of the data is likely to cause substantial harm to the business's competitive position. See 40 CFR 2.208(e)(1). Consistent with that approach, we now propose to determine for individual data elements in these five data categories whether they qualify as CBI. For EPA's proposed CBI determinations for these data elements, please see Section III.B of this preamble for data elements in the two direct emitter data categories and Section III.C of this preamble for data elements in the three supplier data categories. EPA seeks comment on the proposed CBI determinations for the data elements in these five categories. When submitting a comment disagreeing with a proposed determination, please provide detailed supporting information on why the individual data element does or does not qualify as CBI.

Tables 2 and 3 of this preamble summarize the actions taken in the Final CBI Rule for 21 of the 22 data categories created in that notice (excluding the "Inputs to Emission Equations" data category).

Table 2. Summary of Final Confidentiality Determinations for Direct Emitter Data Categories

Data Category	Confidentiality Determination for Data Elements in Each Category
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	Emission Data^a	Data That Are Not Emission Data and Not CBI	Data That Are Not Emission Data But Are CBI^b
Facility and Unit Identifier Information	X		
Emissions	X		
Calculation Methodology and Methodological Tier	X		
Data Elements Reported for Periods of Missing Data that are Not Inputs to Emission Equations	X		
Unit/Process "Static" Characteristics that are Not Inputs to Emission Equations		X ^c	X ^c
Unit/Process Operating Characteristics that are Not Inputs to Emission Equations		X ^c	X ^c
Test and Calibration Methods		X	
Production/Throughput Data that are Not Inputs to Emission Equations			X
Raw Materials Consumed that are Not Inputs to Emission Equations			X
Process-Specific and Vendor Data Submitted in BMM Extension Requests			X

^a Under CAA section 114(c), "emission data" are not entitled to confidential treatment. The term "emission data" is defined at 40 CFR 2.301(a)(2)(i).

^b Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.

^c In the Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

Table 3. Summary of Final Confidentiality Determinations for Supplier Data Categories

Data Category	Confidentiality Determinations for Data Elements in Each Category		
	Emission Data^a	Data That Are Not Emission Data and Not CBI	Data That Are Not Emission Data But Are CBI^b
GHGs Reported		X ^c	X ^c
Production/Throughput Quantities and Composition		X ^c	X ^c
Identification Information		X	
Unit/Process Operating Characteristics		X ^c	X ^c
Calculation, Test, and Calibration Methods		X	
Data Elements Reported for Periods of Missing Data that are Not Related to Production/Throughput or Materials Received		X	
Emission Factors			X
Amount and Composition of materials received			X
Data Elements Reported for Periods of Missing Data That are Related to Production/Throughput or Materials Received			X
Supplier Customer and Vendor Information			X
Process-Specific			X

Data Category	Confidentiality Determinations for Data Elements in Each Category		
	Emission Data ^a	Data That Are Not Emission Data and Not CBI	Data That Are Not Emission Data But Are CBI ^b
and Vendor Data Submitted in BMM Extension Requests			

^a Under CAA section 114(c), "emission data" are not entitled to confidential treatment. The term "emission data" is defined at 40 CFR 2.301(a)(2)(i).

^b Section 114(c) of the CAA affords confidential treatment to data (except emission data) that are considered CBI.

^c In the Final CBI Rule, this data category contains both data elements determined to be CBI and those determined not to be CBI.

B. Direct Emitter Data Categories

For direct emitter subparts L, DD, RR⁴, and SS, EPA proposes to assign each data element to one of 10 direct emitter data categories. Please see the Memorandum entitled "Docket EPA-HQ-OAR-2011-0028 Memo A" for a list of the data elements in these subparts and their proposed category assignment. In the Final CBI Rule, EPA made categorical confidentiality determinations for eight direct emitter data categories. EPA proposes to apply those final determinations to the data elements assigned to those categories in this rulemaking. For the data elements in the two direct emitter data categories that do not have categorical confidentiality determinations, we are

⁴ Subpart RR is neither a direct emitter nor a supplier source category. For the purposes of this action, EPA placed each subpart RR data element into one of the two categories based on its type and characteristics.

proposing on an individual data element basis whether or not they qualify as CBI.⁵

The following two direct emitter data categories do not have category-based CBI determinations: "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" and "Unit/Process Operating Characteristics That are Not Inputs to Emission Equations." For these two categories, EPA evaluated the individual data elements assigned to these categories to determine whether individual data elements qualify as CBI. In the sections below, EPA explains the data elements in these two categories by subpart and states the reasons for proposing to determine that each does or does not qualify as CBI under CAA section 114(c). EPA is specifically soliciting comments on the CBI proposals for data elements in these two data categories. In each subpart section below, the data elements that are part of the annual GHG report submission are identified in bulleted lists. Any data elements that are part of subpart-specific BMM use extension requests are discussed but not individually listed because they are repetitive (for example, there are

⁵ As mentioned above, EPA determined that data elements in these two categories are not "emission data" under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98. That determination would apply to data elements in these six subparts assigned to those categories through this rulemaking.

several data elements that slightly differ by only a date or equipment type), lengthy, and numerous. These data elements are listed individually by data category and proposed confidentiality determination in the Memorandum entitled "Docket EPA-HQ-OAR-2011-0028 Memo A." In the subpart RR section below, EPA also identifies in a bulleted list four data elements for which we considered multiple approaches to making a CBI determination and one data element for which we considered multiple approaches to making a data category assignment. We specifically request comment on the proposed approaches for these five subpart RR data elements.

1. Subpart L - Fluorinated Gas Production.

The "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" data category.

EPA is proposing to assign one subpart L data element to the "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" data category because it is a basic facility-specific characteristic that does not vary with time or with the operations of the process (and is not an input to an emission equation). The data element is:

- Location and function of the stream(s) (including process streams, emissions streams, and destroyed streams) that were analyzed under the initial scoping speciation of fluorinated GHG at 40 CFR 98.124(a), by process. (proposed as CBI)

EPA proposes to determine that disclosure of this data element would likely result in substantial competitive harm if released and therefore will be protected as confidential business information. EPA finds that this data element could provide insight into the manufacturing process and the configuration of the facility, such as which process equipment is sending streams to which process equipment. This could reveal information about configuration efficiencies that the reporter has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on configuration, the competitor would be able to adopt the reporter's efficiency practices with less development time and expense and would gain competitive advantage at the expense of the reporter's competitive advantage. Therefore, EPA finds that releasing the data element describing the location and function of the process streams would likely result in substantial competitive harm, and EPA proposes to determine that this data element qualifies for protection as confidential business information.

The "Unit/process Operating Characteristics That Are Not Inputs to Emission Equations" data category.

EPA is proposing to assign 23 subpart L data elements to the "Unit/process Operating Characteristics That are Not Inputs to Emission Equations" data category because they are characteristics of units, equipment, abatement devices, and other facility-specific characteristics that vary over time with changes in operations and processes (and are not inputs to emission equations). Twenty-two of these data elements are part of extension requests for the use of BMM and relate to the reasons for a request and expected dates of compliance with reporting requirements. One is part of the annual GHG report and is listed here:

- Name of all applicable Federal or State regulations that may apply to the destruction process.

As discussed in more detail below, EPA is proposing that seven data elements in the "Unit/process Operating Characteristics That Are Not Inputs to Emission Equations" data category are CBI. (All seven are part of data elements included in BMM use extension requests.) EPA is proposing to determine that the other data elements in the "Unit/process Operating Characteristics That Are Not Inputs to Emission Equations" data category are not CBI.

EPA proposes to determine that the annual GHG report data element in this category is not CBI. The Federal and State regulations that may apply to a fluorinated GHG

destruction process or device are already part of the public record as part of the facility's Title V operating permit or minor source air emissions permit. Furthermore, Federal regulations are published in the CFR (e.g., Miscellaneous Organic NESHAP is published at 40 CFR part 63, subpart FFFF) and State regulations are similarly published (e.g., the Louisiana Administrative Code 33: III.501.C.6 is published in the Louisiana Register). Because this information is publicly available it does not qualify for protection as confidential business information and will be considered to be non-CBI.

EPA proposes to determine that seven of the 22 data elements included in BMM use extension requests qualify as CBI because their disclosure would likely cause substantial harm to the reporter's competitive positions (each data element and its proposed category assignment are listed by data category in the Memorandum entitled "Docket EPA-HQ-OAR-2011-0028, Memo A.") Three of these data elements reveal the reason for requesting a BMM extension and the reason why equipment was not (or could not be) installed. EPA has reviewed a number of BMM use extension requests and determined that these three data elements contain detailed information, such as process diagrams and operational information. Process diagrams and operational

information could provide insight into configuration efficiencies that the reporter has developed, generally at great expense and time investment, to minimize manufacturing cost and to maximize the manufacturing rate. If a competitor could review such information on the reporter's configuration, the competitor would be able to adopt the reporter's efficiency practices with less development time or expense and would gain competitive advantage at the expense of the reporter's competitive advantage. Therefore, EPA finds that releasing the reasons for requesting a BMM use extension would likely result in substantial competitive harm, and EPA proposes to determine that this information will be treated as confidential business information.

We also propose to find that four other data elements that divulge when an owner or operator will be able to attain data, equipment, or measurements to comply with reporting requirements are eligible for confidential treatment. These data elements would reveal information about the installation date of equipment and the date of anticipated startup. This could provide sensitive information regarding future process shutdowns, and likely would cause substantial competitive harm if disclosed because competitors could use this information to

anticipate and potentially benefit from future decreases in product supply. For example, a competitor able to anticipate the shutdown of a reporter's facility and resulting decrease in product supply, could use this information to attract customers away from a reporter by increasing its own production or could adjust the price of its own products.

EPA proposes to determine that the remaining 15 data elements included in BMM use extension requests do not qualify as CBI. These are narrow data elements that focus on specific reasons for the BMM extension, such as proof of service or equipment backorder, technical infeasibilities, and conflicting safety regulations or laws. Additionally, three of these data elements are descriptions of how the facility will prepare to meet requirements by the end of the BMM period. These data elements do not contain detailed information, such as process diagrams and operational information. Rather, they are information on administrative activities and regulatory requirements to which the facility is subject that are not protected as proprietary by the reporting facilities. Therefore, EPA proposes to determine that these are not data elements the disclosure of which would likely cause

substantial competitive harm and will not be protected as CBI. They will be considered non-CBI.

Finally, three of these data elements are illustrative documentation such as photographs and engineering diagrams that demonstrate how access to process streams, emissions streams, or destroyed streams could not be gained without process shutdown. Based on the type of documentation that EPA has received, EPA finds that these illustrative diagrams and photographs sent by reporters generally do not provide insight into the reporter's production processes or operational efficiencies because they only show information that is relevant to the access point in question and processes immediately upstream and downstream of that access point. Therefore, EPA proposes to determine that disclosure of these data elements is not likely to cause substantial competitive harm; therefore, they do not qualify for protection as CBI and will be considered to be non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination

is not appropriate and why such data element(s) do or do not qualify as CBI.

2. Subpart DD - Electrical Transmission and Distribution Equipment Use.

Subpart DD covers facilities that move electricity rather than produce or process a product. EPA is proposing to assign three subpart DD data elements to the "Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" data category because they are basic characteristics of equipment and facility-specific lines that do not vary with time or with the operations of the process (and are not inputs to emission equations). These three data elements are:

- Nameplate capacity of equipment containing sulfur hexafluoride (SF₆) or perfluorocarbon (PFC) existing as of the beginning of the year (excluding hermetically sealed-pressure switchgear).
- Transmission miles (length of lines carrying voltage at or above 34.5 kilovolt).
- Distribution miles (length of lines carrying voltages at or below 35 kilovolt).

EPA is proposing that all data elements in this data category are non-CBI. Nameplate capacity is the engineered volume of SF₆ or PFC contained in transmission and distribution equipment. Total nameplate capacity can vary significantly from facility to facility depending on the

total number of pieces of equipment used, the age and manufacture of equipment, the location of the equipment (e.g., urban vs. rural), climatic conditions, number of transmission or distribution miles within the facility, etc. Information about nameplate capacity does not provide insight into the performance (ability to transmit or distribute electricity) or the operational efficiency for this type of facility that would likely cause substantial competitive harm if disclosed. Therefore, the disclosure of the nameplate capacity data element is not likely to cause substantial competitive harm, and EPA is proposing it as non-CBI.

Moreover, data on transmission and distribution miles is also publicly available in the Platts UDI Directory of Electric Power Producers and Distributors⁶, which can be purchased by any interested party. Disclosure of these data by EPA does not provide any additional insight into facility-specific operating conditions or process design or to any other proprietary or sensitive information that would give insight for competitors to gain an advantage over the reporter. Because this information is publicly available, EPA proposes to determine that these data

⁶ <http://www.platts.com/Products/electricpowerproducerdirectory>

elements are not confidential; they will be considered non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

3. Subpart RR - Geologic Sequestration of Carbon Dioxide.

Subpart RR is neither an exclusively direct emitter nor a supplier source category, so for the purposes of this action EPA assigned each subpart RR data element to one of the two groups based on its type and characteristics. EPA assigned subpart RR data elements that pertain to surface leakage to one of the direct emitter data categories and the remaining subpart RR data elements to one of the supplier data categories.

For the following five subpart RR data elements in the direct emitter "Test & Calibration Methods" data category, EPA considered multiple approaches to making a CBI determination:

- "MRV plans (monitoring, reporting, and verification) and revised MRV plans," which must contain, among other components, the delineation of the maximum

monitoring area and the active monitoring areas; identification of potential surface leakage pathways for CO₂ in the maximum monitoring area and the likelihood, magnitude, and timing, of surface leakage of CO₂ through these pathways; a strategy for detecting and quantifying any surface leakage of CO₂; a strategy for establishing the expected baselines for monitoring CO₂ surface leakage; and a summary of the considerations you intend to use to calculate site-specific variables for the mass balance equation.

- Annual monitoring report: Narrative history of the monitoring efforts conducted over the previous calendar year (in annual monitoring reports).
- Annual monitoring report: Description of any changes to the monitoring program that were not material changes warranting submission of a revised MRV plan (in annual monitoring reports).
- Annual monitoring report: Narrative history of any monitoring anomalies that were detected in the previous calendar year and how they were investigated and resolved (in annual monitoring reports).
- A request for discontinuation of reporting must contain either 40 CFR 98.441(b)(2)(i) or (b)(2)(ii): (ii) For all other wells, and as an alternative for wells permitted as Class VI under the Underground Injection Control program, a demonstration that current monitoring and model(s) show that the injected CO₂ stream is not expected to migrate in the future in a manner likely to result in surface leakage.

EPA is proposing to assign these five data elements to the "Test & Calibration Methods" data category because they are information about methods that are or were used to demonstrate that the injected CO₂ stream is not expected to migrate in the future in a manner likely to result in surface leakage. For these five data elements, EPA considered deviating from the determination that all data

elements in the "Test & Calibration Methods" category are not entitled to CBI treatment. We evaluated whether the level of detail and information in these documents will vary so much from reporter to reporter based on site-specific conditions that a confidentiality determination cannot be made until the material is submitted and closely evaluated by EPA on a case-by-case basis. For the "MRV plans and revised MRV plans" data element, EPA further evaluated whether some specific elements, methods, or supportive material are entitled to CBI treatment or require case-by-case evaluation so that they should be broken out as their own data elements. Having considered these approaches, we nonetheless find that disclosure by EPA of the details in these five data elements would not provide insight to competitors about proprietary information. These data elements reveal information about monitoring techniques for which information is publicly available in the scientific community about their effectiveness, such as in conference papers and peer reviewed journal articles⁷. The "MRV plans and revised MRV plans" data element does not contain the monitoring results that are obtained after implementation of the MRV plan, or project information the disclosure of which is likely to

⁷ For example, see papers from the International Conference on Greenhouse Gas Control Technologies

cause substantial competitive harm. For the discontinuation of reporting data element, the reporter will not submit this information to EPA until after the injection has ceased and the well or group of wells have been plugged or abandoned, and thus the public availability upon EPA's release of this information is not likely to cause substantial harm to the reporter's competitive position. Therefore, we are proposing that the five data elements listed above merit the same confidentiality determination as the other data elements in the "Test & Calibration Methods" data category (not CBI).

We seek comment on this determination and any rationale for or against this approach. EPA notes that until this action is finalized, EPA will make case-by-case confidentiality determinations for materials submitted to EPA under subpart RR, including "MRV plans and revised MRV plans."

For the following subpart RR data element in the "Calculation Methodology and Methodological Tier" data category, EPA considered multiple approaches to making a data category assignment:

- Annual monitoring report: A description of any surface leakages of CO₂, including a discussion of all methodologies and technologies involved in detecting and quantifying the surface leakages and any

assumptions and uncertainties involved in calculating the amount of CO₂ emitted.

EPA considered assigning this data element to the "Calculation Methodology and Methodological Tier" data category, and EPA considered assigning it to the "Test & Calibration Methods" category, as was done with the other annual monitoring report data elements, and either following the category-wide non-CBI determination or making a CBI determination on a case-by-case basis once the material is submitted and closely evaluated by EPA. Having considered these options, we ultimately determined that this data element provides the methodologies, technologies, and assumptions used by reporters to calculate the mass of CO₂ emitted from surface leakage. Therefore, we are proposing to assign the data element to the "Calculation Methodology and Methodological Tier" data category, which is limited to data elements that EPA has determined to be "emission data" under CAA section 114(c) and 40 CFR 2.301(a)(2)(i) for purposes of determining the GHG emissions to be reported under Part 98 and therefore not entitled to confidential treatment. We seek comment on this determination and any rationale for or against this approach.

4. Subpart SS - Electrical Equipment Manufacture or Refurbishment.

EPA is not proposing to assign any subpart SS data elements to the "Unit/process Static Characteristics That are Not Inputs to Emission Equations" or the "Unit/process Operating Characteristics That are Not Inputs to Emission Equations" data category.

The subpart SS data elements are listed individually by data category and proposed confidentiality determination in the Memorandum entitled "Docket EPA-HQ-OAR-2011-0028 Memo A."

C. GHG Supplier Data Categories

For supplier subparts QQ, RR, and UU⁸, EPA is assigning each data element to one of eleven supplier data categories. For the data elements in three data categories, we are proposing whether or not each separate data element is entitled to confidential treatment.

As mentioned above in Section III.B of this preamble, for the eight data categories with category-based final determinations, EPA will apply these determinations to all the data elements assigned to those categories from the six

⁸ Subparts RR and UU are neither exclusively direct emitter nor supplier source categories. For the purposes of this action, EPA placed each subpart RR data element into one of the two categories based on its type and characteristics. EPA placed all subpart UU data elements into the supplier source category based on their type and characteristics.

subparts. EPA's rationale for the final CBI determination can be found in the preamble to the Final CBI Rule (76 FR 30782). For a list of the proposed category assignments (excluding inputs to emission equations) for the data elements in these subparts, please see the Memorandum entitled "Docket EPA-HQ-OAR-2011-0028 Memo A."

With respect to the three supplier data categories that have been determined not to be emission data but do not have category based confidentiality determinations ("GHGs Reported," "Production/Throughput Quantities and Composition," and "Unit/Process Operating Characteristics"), EPA evaluated the individual data elements in the six subparts assigned to these categories to determine whether they qualify as CBI. In the sections below, EPA lists the data elements in the three categories by subpart and states the reasons for proposing to determine that these data elements do or do not qualify for protection as CBI under Freedom of Information Act (FOIA) exemption 4, CAA section 114(c), and EPA regulations at 40 CFR 2.208 and 2.301. EPA is emphasizing that we request comment on these proposals.

1. Subpart QQ - Importers and Exporters of Fluorinated Greenhouse Gases Contained in Pre-charged Equipment or Closed-cell Foams.

EPA is proposing to assign 10 data elements to the "GHGs Reported" data category because they are the actual GHGs reported as imported or exported. Five of the data elements are for importers and five are for exporters. The importer and exporter data elements are identical except for whether they are specific to importers or exporters, so we have combined the analogous data elements in the five bullets in the list below to reduce repetition. Note that all 10 data elements represented in this specific case are also in the "Production/Throughput Quantities and Composition" data category because the GHG reported is also the product being imported or exported.⁹

- Total mass of each fluorinated greenhouse gas (F-GHG) imported/exported in pre-charged equipment or closed-cell foams.
- Identity of imported/exported F-GHG used as a refrigerant or electrical insulator.
- Identity of the imported/exported F-GHG contained in the closed-cell foam in each appliance.
- Identity of the imported/exported F-GHG in the foam.
- If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: total mass in metric tons of CO₂e of the fluorinated GHGs imported/exported in closed-cell foams.

⁹ Where a data element is included in more than one data category, we are proposing the same CBI determination for that data element in both categories.

EPA is proposing to assign 30 data elements to the "Production/Throughput Quantities and Composition" data category because they refer to the composition and quantities of the products imported and exported. Ten of the data elements are in the "GHGs Reported" data category list above because the product imported or exported is also the GHG reported; they are not repeated in the list below. For the other 20 data elements in this data category, the 10 importer data elements and 10 exporter data elements are identical except for whether they are specific to importers or exporters. Therefore, we have combined the analogous data elements in the 10 bullets in the list below to reduce repetition.

- Charge size (holding charge, if applicable) for each type of pre-charged equipment imported/exported.
- Number of pre-charged equipment imported/exported.
- Mass of the imported/exported F-GHG contained in the foam in each appliance.
- Number of appliances imported/exported.
- Density of the imported/exported F-GHG in the foam.
- Volume of foam imported/exported.
- If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: For closed-cell foams that are imported/exported inside of appliances, the mass of the fluorinated GHGs in CO₂e contained in the foam in each appliance.
- If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-

cell foam: For closed-cell foams that are imported/exported inside of appliances, the number of appliances imported/exported for each type of appliance.

- If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: For closed-cell foams that are not imported/exported inside of appliances, the mass in CO₂e of the fluorinated GHGs in the foam.
- If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: For closed-cell foams that are not imported/exported inside of appliances, the volume of foam imported/exported for each type of closed-cell foam.

For subpart QQ, EPA is proposing that all data elements in the "GHGs Reported" and "Production/Throughput Quantities and Composition" data categories be considered CBI. These data categories contain importer- and exporter-level production information (mass, volume, density, quantity, or identity of the equipment or foam or fluorinated gas within the equipment or foam), reported separately for pre-charged equipment, closed-cell foam, and for appliances that contain closed-cell foam. EPA proposes to determine that these importer- and exporter-level product-specific GHG data are to be considered CBI because the disclosure of these data elements would likely cause substantial harm to the competitive positions of businesses reporting these data. Releasing these data could be detrimental to the operational and marketing strategies of

the reporting parties, as explained in the following example.

The disclosure of the volume of foam or the count of appliances or equipment exported provides insight into a firm's market share and financial performance. For example, product import or export data could reveal whether a U.S. firm is experiencing rapid growth or decline in market share. Competitors could use such data to gain a competitive advantage over another firm by better approximating a firm's market share. Competitors may be able to drive struggling reporters out of business by implementing short-term price-cutting tactics. In many cases, an accurate estimate of the market share of a firm is difficult to procure, and the disclosure of such information through the GHG Reporting Rule could harm the competitive position of reporting parties. As previously noted, EPA is proposing that all data elements in these two data categories ("GHGs Reported" and "Production/Throughput Quantities and Composition") are to be considered CBI. EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information

on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

EPA is proposing to assign eight data elements to the "Unit/Process Operating Characteristics" data category because they refer to the operating characteristics of the supplier, such as dates of shipment. Four data elements are for importers and four are for exporters. The importer and exporter data elements are identical except for whether they relate to imports or exports, so only four bullets appear in the list below to reduce repetition.

- Dates on which pre-charged equipment were imported/exported.
- Dates on which closed-cell foams were imported/exported.
- If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: Dates on which the closed-cell foams were imported/exported.
- If the importer/exporter does not know the identity and mass of the fluorinated GHGs within the closed-cell foam: Certification that the importer/exporter was unable to obtain information on the identity and mass of the fluorinated GHGs within the closed-cell foam from the closed-cell foam manufacturer or manufacturers.

EPA is proposing that all data elements in this data category are non-CBI. As explained below, EPA finds that the release of these data will not likely cause substantial competitive harm.

Releasing a certification about the ability to obtain information would not likely cause substantial competitive harm because certification statements are general in nature, do not provide any insight into the design or operation efficiencies of the plant, and do not reveal other competitive information (e.g., market share, ability to increase production to meet new increases in demand, or price structures). Moreover, certification statements will consist of only the language that EPA publicly provides in the data reporting tool and will not include any facility- or process-specific information that could be considered proprietary. Therefore, EPA proposes that certification statements are not CBI.

The other subpart QQ data elements in this data category are dates of import or export. Dates do not reveal information related to the type or quantity of product imported or exported, or to the operational strengths or weaknesses, operational capacity, or customer base of the reporter. Dates of import or export would not likely cause substantial competitive harm if released because dates do not provide any insight into at what percent of capacity a firm is operating or into financial performance, the release of which might allow competitors to implement short-term price cutting tactics to capture

the reporter's market share. Therefore, EPA proposes that these data elements, the date of the import or export, are not eligible for confidential treatment and will be considered non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

2. Subpart RR - Geologic Sequestration of Carbon Dioxide.

Subpart RR is neither a direct emitter nor a supplier source category, so for the purposes of this action EPA assigned each subpart RR data element to one of the two groups based on its type and characteristics. EPA assigned subpart RR data elements that pertain to surface leakage to one of the direct emitter data categories and the remaining subpart RR data elements to one of the supplier data categories.

EPA is proposing to assign nine data elements to the "GHGs Reported" data category because they are the actual GHGs reported. Note that all nine of the data elements in this specific case are also in the "Production/Throughput

Quantities and Composition" data category because the GHG reported is also the product being used as a throughput.¹⁰

- If you receive CO₂ by pipeline, report the following for each receiving flow meter: Total net mass of CO₂ received (metric tons) annually.
- If you receive CO₂ in containers, report: The net mass of CO₂ received (in metric tons) annually.
- If you use more than one receiving flow meter, report the total net mass of CO₂ received (metric tons) through all flow meters annually.
- For each injection flow meter (mass or volumetric), report: the mass of CO₂ injected annually.
- Total CO₂ injected during the reporting year as calculated in Equation RR-6.
- For each separator flow meter (mass or volumetric), report: CO₂ mass produced (metric tons) annually.
- Annual CO₂ produced in the reporting year, as calculated in Equation RR-9.
- Annual CO₂ sequestered in the subsurface geologic formations in the reporting year, as calculated by Equation RR-11 or RR-12.
- Cumulative mass of CO₂ reported as sequestered in the subsurface geologic formations in all years since the well or group of wells became subject to reporting requirements under subpart RR.

EPA is proposing to assign 26 data elements to the "Production/Throughput Quantities and Composition" data category because they refer to the quantities and composition of CO₂ produced and used as throughput at the site. Note that nine of the data elements in this specific

¹⁰ Where a data element is included in more than one data category, we are proposing the same CBI determination for that data element in both categories.

case are in the "GHGs Reported" data category list above because the GHG reported is also the product being used as a throughput. They are not repeated in the list below. Furthermore, five data elements about mass flow meters and five data elements about volumetric flow meters are identical except for whether they are specific to mass or volumetric meters. Therefore, we have combined the 10 analogous data elements into five bullets in the list below to reduce repetition. The remaining seven data elements that EPA proposes to assign to this data category each appear in the list below under an individual bullet.

- For submissions in support of an R&D project exemption from reporting under subpart RR: planned annual CO₂ injection volumes during this time period.
- If a volumetric/mass flow meter is used to receive CO₂, report the following unless you reported yes to 40 CFR 98.446(a)(4): Volumetric/mass flow through a receiving flow meter at standard conditions in each quarter.
- If a volumetric/mass flow meter is used to receive CO₂, report the following unless you reported yes to 40 CFR 98.446(a)(4) of this section: The volumetric/mass flow through a receiving flow meter that is redelivered to another facility without being injected into your well in each quarter.
- If a volumetric/mass flow meter is used to receive CO₂, report the following unless you reported yes to 40 CFR 98.446(a)(4) of this section: CO₂ concentration in the flow in each quarter.
- If you receive CO₂ in containers, report: The mass (in metric tons) or volume at standard conditions (in standard cubic meters) of contents in containers in each quarter.

- If you receive CO₂ in containers, report: The concentration of CO₂ of contents in containers (volume or weight percent CO₂ expressed as a decimal fraction) in each quarter.
- If you receive CO₂ in containers, report: The mass (in metric tons) or volume (in standard cubic meters) of contents in containers that is redelivered to another facility without being injected into your well in each quarter.
- For each injection flow meter (mass or volumetric), report: CO₂ concentration in flow (volume or weight percent CO₂ expressed as a decimal fraction) in each quarter.
- For each injection flow meter, report: If a volumetric/mass flow meter is used, the volumetric/mass flow rate at standard conditions in each quarter.
- For each separator flow meter (mass or volumetric), report: CO₂ concentration in flow (volume or weight percent CO₂ expressed as a decimal fraction) in each quarter.
- If a volumetric/mass separator flow meter is used, volumetric/mass flow rate at standard conditions in each quarter.
- The entrained CO₂ in produced oil or other fluid divided by the CO₂ separated through all separators in the reporting year (weight percent CO₂ expressed as a decimal fraction) used as the value for X in Equation RR-9 and as determined according to your EPA-approved MRV plan.

EPA proposes that all data elements in these two data categories ("GHGs Reported" and "Production/Throughput Quantities") are not CBI. As explained below, EPA finds that the release of these data will not likely cause substantial competitive harm.

Six of the data elements are facility-level and flow meter-level information on the quantity of CO₂ injected. The six data elements are available from Underground Injection Control (UIC) permits, which are issued for each injection well by EPA or by States that have assumed primary enforcement authority for permitting injection wells. Information related to the permits is reported to EPA or States at least annually and made available to the public either through State websites or upon request from the public. Because this information is routinely publicly available, EPA finds that further disclosure of data elements on CO₂ injection is not likely to cause substantial competitive harm to the reporter, and EPA proposes to determine that this information will not be treated as confidential; rather it will be considered non-CBI.

Six of the data elements are facility-level and flow meter-level information on the quantity of CO₂ produced. The reporters that are required to include this information in their annual reports inject CO₂ underground into oil or natural gas reservoirs through injection wells for the purpose of increasing crude oil production or enhancing recovery of natural gas, and the CO₂ is then produced with oil and gas. State oil and gas conservation agencies in all States where enhanced oil and gas recovery is occurring

collect information on quantities of oil and gas produced by well to calculate royalties. This information is reported to EPA or States at least annually and made available to the public either through State websites or upon request from the public. Moreover, incremental oil production from CO₂ injection is published in the biannual Oil & Gas Journal Enhanced Oil Recovery survey.¹¹ Given the present level of reporting of production in the EOR industry just described (i.e., information is made publicly available by States and in the biannual industry reports), EPA finds that CO₂ production information does not provide additional insight into any aspect of operations the release of which might undercut any competitive advantage that the reporter may enjoy. Because this information is publicly available, EPA proposes to determine that this information will not be treated as confidential; rather, it will be considered to be non-CBI.

Subpart RR facilities must report annual mass of CO₂ sequestered in the subsurface geologic formations in the reporting year, as calculated by Equation RR-11 or RR-12. These values are calculated from CO₂ injection, production, and emission data using a mass balance approach. As discussed above in this section, CO₂ injection and CO₂

¹¹ Worldwide Enhanced Oil Recovery Survey. 2010. Oil and Gas Journal, Volume 108, Issue 14.

production data are already publicly available. In addition, CO₂ emission data are emission data and must be made publicly available. As a result, the quantity of CO₂ sequestered can be calculated from data that are already publicly available. Because this information may be readily derived from information already publicly available, EPA has determined that its release of the reported mass of CO₂ sequestered would not likely cause substantial competitive harm. For these reasons, EPA proposes to determine that this information is not eligible for confidential treatment and will be considered to be non-CBI.

Twelve of the data elements are facility-level and flow meter-level information on the quantity of CO₂ received. None of the data elements on CO₂ received includes information on CO₂ prices or contract terms, such as information on the concentration of other incidental substances in the CO₂ stream, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. The data elements also do not include information that would allow a competitor to deduce the reporter's operating costs.

Moreover, as an example, for a facility where the CO₂ received is wholly injected and is not mixed with any other supply of CO₂, such as a geologic sequestration project at a deep saline formation, the reporter may report the quantity of CO₂ injected as the quantity of CO₂ received. This amount can be determined from information that is reported at least annually as part of a facility's UIC permit and made available to the public either through State websites or upon request from the public. For the reasons described in this paragraph, EPA finds that releasing the 12 data elements on CO₂ received would not likely result in substantial competitive harm, and EPA proposes to determine that this information does not qualify for confidential treatment and will be considered to be non-CBI.

EPA is proposing to assign nine data elements to the "Unit/Process Operating Characteristics" data category because they refer to the operating characteristics of the site, such as project duration and CO₂ source.

- For submissions in support of a research and development (R&D) project exemption from reporting under subpart RR: The planned duration of CO₂ injection for the project.
- For submissions in support of an R&D project exemption from reporting under subpart RR: The research purposes of the project.

- For submissions in support of an R&D project exemption from reporting under subpart RR: The source and type of funding for the project.
- For submissions in support of an R&D project exemption from reporting under subpart RR: The class of the underground injection control permit.
- For submissions in support of an R&D project exemption from reporting under subpart RR: The duration of the underground injection control permit.
- For submissions in support of an R&D project exemption from reporting under subpart RR: For an offshore facility not subject to Safe Drinking Water Act, a description of the legal instrument authorizing geologic sequestration.
- Source of the CO₂ received according to the following categories: CO₂ production wells, electric generating unit, ethanol plant, pulp and paper mill, natural gas processing, gasification operations, other anthropogenic source, CO₂ received from a discontinued enhanced oil and gas recovery project, and unknown.
- For each injection flow meter, report the location of the flow meter.
- If a well is permitted by an Underground Injection Control program, report: Underground Injection Control permit class.

EPA is proposing that all data elements in this data category are non-CBI. As explained below, EPA finds that the release of these data will not likely cause substantial competitive harm.

Five of these data elements include basic information on the legal instrument authorizing geologic sequestration. For a facility permitted by the UIC program under authority of the Safe Drinking Water Act, information on the class and duration of the permit is routinely publicly available

in the UIC permit. For an offshore facility that is not subject to the Safe Drinking Water Act and therefore does not need a UIC permit, the facility would be subject to other statutory authority authorizing the facility to conduct geologic sequestration. Since these five data elements contain public information, EPA finds that their release by EPA is not likely to cause substantial competitive harm; they do not qualify for confidential treatment and will be considered to be non-CBI.

Three of these data elements are information on an R&D project's planned duration, purpose, source of funding, and type of funding. These data elements do not include the amount of funding received. They do not provide insight into the costs of sequestering CO₂ at the facility, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. For many existing R&D projects, information in these three data elements is already publicly available. For example, the Department of Energy National Energy Technology Laboratory publishes information on its website about the Regional Carbon Sequestration

Partnership projects that it funds.¹² These projects also participate in public conferences at which they present papers about their projects and findings. Since this information is of the same nature for all projects, EPA finds that publication of such information by some projects demonstrates that disclosure of equivalent information for all projects is not likely to cause substantial harm. Therefore, EPA proposes to determine that this information is not eligible for confidential treatment; it will be considered to be non-CBI.

The data element related to the source of CO₂ received identifies the type of source that supplied the facility with CO₂ in the reporting year, such as an ethanol plant. This data element does not include information that would identify a specific facility or company that supplies the CO₂ to the reporter, or the amount of CO₂ provided by each supplier. This data element does not include information on CO₂ prices or contract terms, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. Since revealing this data element does not provide

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http://www.netl.doe.gov/technologies/carbon_seq/partnerships/RCSP_ProjectDescriptions.html

competitors with an advantage, EPA proposes to determine that it is not eligible for confidential treatment and will be considered to be non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

3. Subpart UU - Injection of Carbon Dioxide.

EPA first proposed in a single subpart RR the reporting requirements that are now divided between final subparts RR and UU. EPA moved all definitions, requirements, and procedures for facilities conducting only CO₂ injection into a new subpart (subpart UU). Subpart RR retains all definitions, requirements, and procedures related to facilities conducting geologic sequestration. The explanation and a summary of major changes since proposal appear in the final subparts RR and UU promulgation notice (75 FR 75060, December 1, 2010). Subpart UU is neither a direct emitter nor a supplier source category, so for the purposes of this action EPA assigned the subpart UU data elements to one of the

supplier data categories because they are most similar in type and characteristics to supplier data.

EPA is proposing to assign three data elements to the "GHGs Reported" data category because they are the actual GHGs reported. Note that all three of the data elements in this specific case are also in the "Production/Throughput Quantities and Composition" data category because the GHG reported is also the GHG being used as a throughput.¹³

- If you receive CO₂ by pipeline, report the following for each receiving flow meter: Total net mass of CO₂ received (metric tons) annually.
- If you receive CO₂ in containers, report: The net total mass of CO₂ received (in metric tons) annually.
- If you use more than one receiving flow meter, report the net total mass of CO₂ received (metric tons) through all flow meters annually.

EPA is proposing to assign 12 data elements to the "Production/Throughput Quantities and Composition" data category because they refer to the quantities and composition of CO₂ used as throughput at the site. Note that three of the data elements in this specific case are in the "GHGs Reported" data category list above because the GHG reported is also the GHG being used as a throughput. They are not repeated in the list below. Furthermore, three data elements about mass flow meters and three data

¹³ Where a data element is included in more than one data category, we are proposing the same CBI determination for that data element in both categories.

elements about volumetric flow meters are identical except for whether they are specific to mass or volumetric meters. Therefore, we have combined the six analogous data elements into three bullets in the list below to reduce repetition. The remaining three data elements that EPA proposes to assign to this data category also appear in the list below.

- If you receive CO₂ by pipeline, report the following for each receiving flow meter: If a volumetric/mass flow meter is used to receive CO₂: Volumetric/mass flow through a receiving flow meter at standard conditions in each quarter.
- If you receive CO₂ by pipeline, report the following for each flow meter: If a volumetric/mass flow meter is used to receive CO₂: The volumetric/mass flow through a receiving flow meter that is redelivered to another facility without being injected into your well in each quarter.
- If you receive CO₂ by pipeline, report the following for each receiving flow meter: If a volumetric/mass flow meter is used to receive CO₂: CO₂ concentration in the flow in each quarter.
- If you receive CO₂ in containers, report: The mass (in metric tons) or volume at standard conditions (in standard cubic meters) of contents in containers in each quarter.
- If you receive CO₂ in containers, report: The concentration of CO₂ of contents in containers (volume or weight percent CO₂ expressed as a decimal fraction) in each quarter.
- If you receive CO₂ in containers, report: The mass (in metric tons) or volume (in standard cubic meters) of contents in containers that is redelivered to another facility without being injected into your well in each quarter.

EPA proposes that all data elements in these two data categories ("GHGs Reported" and "Production/Throughput Quantities") are not CBI. These data elements are facility-level and flow meter-level data for CO₂ received.

None of the data elements on CO₂ received includes information on CO₂ prices or contract terms, such as information on the concentration of other incidental substances in the CO₂ stream, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. The data elements also do not include information that would allow a competitor to deduce the reporter's operating costs. Moreover, for a facility where the CO₂ received is wholly injected and is not mixed with any other supply of CO₂, such as a geologic sequestration project at a deep saline formation, the reporter may report the quantity of CO₂ injected as the quantity of CO₂ received. This amount can be determined from information that is reported at least annually as part of a facility's UIC permit and made available to the public either through State websites or upon request from the public.

For these reasons, EPA finds that releasing the 12 data elements on CO₂ received would not likely result in

substantial competitive harm, and EPA proposes to determine that this information does not qualify for confidential treatment and will be considered to be non-CBI.

EPA is proposing to assign one data element to the "Unit/Process Operating Characteristics" data category because it refers to an operating characteristic of the site.

- Source of the CO₂ received according to the following categories: CO₂ production wells, electric generating unit, ethanol plant, pulp and paper mill, natural gas processing, gasification operations, other anthropogenic source, discontinued enhanced oil and gas recovery project, and unknown.

The data element related to the source of CO₂ received identifies the type of source that supplied the facility with CO₂ in the reporting year, such as an ethanol plant. This data element does not include information that would identify a specific facility or company that supplies the CO₂ to the reporter, or the amount of CO₂ provided by each supplier. This data element does not include information on CO₂ prices or contract terms, the disclosure of which could allow competitors to ascertain the relative strength of their market position and to identify sources of competitive advantage (or disadvantage) among competitors. EPA finds that the release by EPA of the data element related to the source of CO₂ received is not likely to cause

substantial competitive harm, and EPA proposes to determine that it does not qualify for confidential treatment; it will be considered to be non-CBI.

EPA is soliciting comments on EPA's proposed determinations described above. When submitting a comment disagreeing with a proposed determination, please identify the specific data element(s) and provide detailed supporting information on why EPA's proposed determination is not appropriate and why such data element(s) do or do not qualify as CBI.

D. Commenting on the Proposed Confidentiality
Determinations and Data Category Assignments

By making confidentiality determinations prior to data reporting through this proposal and rulemaking process, potential reporters are able to submit comments identifying data they consider sensitive and provide the rationales and supporting documentation they would otherwise submit for case-by-case confidentiality determinations. We seek comment on the confidentiality status of data elements in two direct emitter data categories ("Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" and "Unit/Process Operating Characteristics That are Not Inputs to Emission Equations") and three supplier data categories ("GHGs Reported," "Production/Throughput

Quantities and Composition," and "Unit/Process Operating Characteristics"). We will evaluate claims of confidentiality before finalizing the proposed confidentiality determinations; however, this will be your only opportunity to substantiate your confidentiality claim. Where we make confidentiality determinations prior to data reporting through this proposal and rulemaking process, you will not be able to claim separately that certain data that has already been categorized as data to be released are CBI when you submit those data as part of a GHG emissions report under Part 98.

Please consider the following instructions in submitting comments on the data elements in these six subparts.

Please identify each individual data element you do or do not consider to be CBI or emission data in your comments. Please explain specifically how the public release of that particular data element would or would not cause a competitive disadvantage to a facility. Discuss how this data element may be different from or similar to data that are already publicly available. Please submit information identifying any publicly available sources of information containing the specific data elements in question, since data that are already available through

other sources would not be CBI. In your comments, please identify the manner and location in which each specific data element you identify is available, including a citation. If the data are physically published, such as in a book, industry trade publication, or federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and ISBN or other identifier. For data published on a website, provide the address of the website and the date you last visited the website and identify the website publisher and content author.

If your concern is that competitors could use a particular input to discern sensitive information, specifically describe the pathway by which this could occur and explain how the discerned information would negatively affect your competitive position. Describe any unique process or aspect of your facility that would be revealed if the particular data element you consider sensitive were made publicly available. If the data element you identify would cause harm only when used in combination with other publicly available data, then describe the other data, identify the public source(s) of these data, and explain how the combination of data could be used to cause competitive harm. Describe the measures currently taken to

keep the data confidential. Avoid conclusory and unsubstantiated statements, or general assertions regarding potential harm. Please be as specific as possible in your comments and include all information necessary for EPA to evaluate your comments.

IV. Proposal of CBI determinations for New Data Elements in Subparts II and TT

The Technical Corrections final rule includes amendments to 48 data elements in subparts FF, II, OO, and TT, including revising 17 data elements that are not inputs to equations and adding seven data elements that are not inputs to equations. As explained in Section II.D of this preamble, the revisions to the 17 non-input data elements do not change the information to be collected and therefore do not affect the final confidentiality determinations for these data elements in the Final CBI rule. This section sets forth EPA's proposed confidentiality determinations for the seven new non-input data elements. These new data elements were added to subparts II and TT.

We are proposing to categorize two of the seven new data elements in the "Calculation Methodology & Methodological Tier" data category. Because there was a categorical determination in the Final CBI Rule that this

data category is emissions data, we are proposing these two data elements as emissions data.

- Statement that biogas pressure is incorporated into monitoring equipment internal calculations. (Subpart II: Calculation Methodology & Methodological Tier).
- The calendar year for which the data elements in 40 CFR 98.466(b) apply. (Subpart TT: Calculation Methodology & Methodological Tier).

We are proposing to categorize one of the seven new data elements in the "Test & Calibration Methods" data category. Because there was a categorical determination in the Final CBI Rule that this data category is not CBI, we are proposing that this data element is not CBI.

- If DOCx was determined by a 60-day anaerobic biodegradation test, specify the test method used. (Subpart TT: Test & Calibration Methods).

EPA is proposing to categorize four of the seven new data elements in the two direct emitter data categories with no categorical confidentiality determination ("Unit/Process 'Static' Characteristics That are Not Inputs to Emission Equations" and "Unit/Process Operating Characteristics That are Not Inputs to Emission Equations" data categories). For these two data categories, EPA evaluated the individual data elements assigned to these categories to determine whether individual data elements

qualify as CBI. In this section, EPA explains the data elements in these two categories and states the reasons for proposing to determine that each does or does not qualify as CBI under CAA section 114(c).

EPA proposes to determine that the four new data elements, which are all in subpart TT and listed below, are not CBI.

- If a methane correction factor (MCF) value other than the default of 1 is used, provide a description of the aeration system, including aeration blower capacity.
- If an MCF value other than the default of 1 is used, the fraction of the landfill containing waste affected by the aeration.
- If an MCF value other than the default of 1 is used, provide the total number of hours during the year the aeration blower was operated.
- If an MCF value other than the default of 1 is used, provide other factors used as a basis for the selected MCF value.

These data elements describe the aeration system, the number of hours the aeration system was used, the capacity of the aeration blower, the fraction of landfill affected by aeration, and the factors used as the basis of the methane correction factor. These data elements do not provide insight into current production rates, raw material consumption, or other information that competitors could use to discern market share and other sensitive information. Therefore, EPA proposes that they will not be

protected as confidential business information and will be considered to be non-CBI.

We are soliciting comments on the proposed categorical assignments for the seven new data elements in these subparts. If you believe that EPA has improperly assigned certain data elements in these subparts to the data categories, please provide specific comments identifying which data elements may be assigned incorrectly along with a detailed rationale for why they may be assigned incorrectly and in which data category they belong.

V. Deferral of Inputs to Emission Equations for Subparts FF and TT and Amendment to Table A-6

Of the 48 subpart FF, II, OO, and TT data elements that are addressed in the Technical Corrections final rule, 24 are inputs to emission equations. Of these, 21 are revisions to existing inputs to emission equations that are addressed in the Final Deferral and included in Tables A-6 and A-7 to subpart A of Part 98. As explained in Section II.D of this preamble, for 18 of the 21 inputs, the revisions do not affect the Final Deferral. For the remaining three inputs, however, which are in subpart TT, the revisions do re-numerate section references. These three equation inputs were added in the Final Deferral to Table-6 to subpart A. We are therefore proposing in this

action to amend Table A-6 to re-numerate three subpart TT equation inputs as finalized in the Technical Corrections final rule.

Of the 24 inputs to emission equations addressed in the Technical Corrections final rule, three are new data elements that we are proposing for the first time to add to the "Inputs to Emission Equations" data category. In this action, we are proposing to defer the reporting deadline for the following three data elements to March 31, 2013.

- Moisture content used in Equation FF-1 and FF-3. (Subpart FF: Inputs to Emission Equations).
- The gaseous organic concentration correction factor used, if Equation FF-9 was required. (Subpart FF: Inputs to Emission Equations).
- The methane correction factor (MCF) value used in the calculations. (Subpart TT: Inputs to Emission Equations).

As explained in Section II.A of the Final Deferral, EPA is deferring the reporting deadline until March 31, 2013, rather than March 31, 2015, for certain data elements categorized as inputs to emission equations because our evaluations on the sensitivity of these data elements are less time-consuming or sufficiently far along in the inputs evaluation process, outlined in the memorandum to the Final Deferral docket, "Process for Evaluating and Potentially Amending Part 98 Inputs to Emission Equations," to allow for data reporting in 2013. As with other equation inputs,

EPA is in the process of evaluating the sensitivity of these three equation inputs, and we believe that we can complete our evaluation before March 31, 2013, the current reporting deadline for the equation inputs listed in Table A-6 of Subpart A. EPA is therefore proposing to add these inputs to Table A-6 to require their reporting by March 31, 2013.

In the Technical Corrections final rule, we added the two new subpart FF inputs to equations to the reporting requirements at 40 CFR Part 98.326(o). This regulatory paragraph is already included in Table A-6 for reporting by March 31, 2013, so we are not proposing in this action to amend Table A-6 to account for the new subpart FF inputs to equations. However, the new subpart TT equation input is not yet included in Table A-6. We are therefore proposing in this action to amend Table A-6 to add it and require its reporting by March 31, 2013.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues.

Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action is administrative and does not increase the reporting burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these six subparts, under 40 CFR part 98, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) documents prepared by EPA have been assigned the following OMB control numbers: 2060-0650, for subparts L, DD, and SS; 2060-0649, for subparts RR and UU; and 2060-0647 for subparts FF, II, and TT. The OMB control numbers for EPA's regulations in 40 CFR are listed at 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless

the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this re-proposal on small entities, "small entity" is defined as:

(1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any new requirement on small entities that are not currently required by Part 98.

EPA took several steps to reduce the impact of Part 98 on small entities. For example, EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, EPA did not require facilities to

install continuous emission monitoring systems (CEMS) if they did not already have them. Facilities without CEMS can calculate emissions using readily available data or data that are less expensive to collect such as process data or material consumption data. For some source categories, EPA developed tiered methods that are simpler and less burdensome. Also, EPA required annual instead of more frequent reporting. Finally, EPA continues to conduct significant outreach on the mandatory GHG reporting rule and maintains an "open door" policy for stakeholders to help inform EPA's understanding of key issues for the industries.

We continue to be interested in the potential impacts of this action on small entities and welcome comments on issues related to such effects.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of

affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This re-proposal is administrative and does not increase the reporting burden. Thus, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

In developing Part 98, EPA consulted with small governments pursuant to a plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. For a summary of EPA's consultations with State and/or local officials or other representatives of State and/or local governments in developing Part 98, see Section VIII.D of the preamble to the final rule (74 FR 56370, October 30, 2009).

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on

the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. However, for a more detailed discussion about how Part 98 relates to existing State programs, please see Section II of the preamble to the final rule (74 FR 56266, October 30, 2009).

This action applies to facilities that directly emit greenhouses gases. It does not apply to governmental entities unless a government entity owns a facility that directly emits greenhouse gases above threshold levels, so relatively few government facilities would be affected. This action also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials. For a summary of EPA's consultation with State and local organizations and representatives in developing Part 98, see Section VIII.E of the preamble to the final rule (74 FR 56371, October 30, 2009).

F. Executive Order 13175: Consultation and Coordination
with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This re-proposal is administrative and does not increase the reporting burden. Thus, Executive Order 13175 does not apply to this action. For a summary of EPA's consultations with tribal governments and representatives, see Section VIII.F of the preamble to the final rule (74 FR 56371, October 30, 2009). EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children from
Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions that Significantly
Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental

justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action addresses only reporting and recordkeeping procedures.

GHG Reporting Rule-Proposed Confidentiality Determinations
for 10 Subparts

List of Subjects 40 CFR Part 98

Environmental protection, Administrative practice and
procedure, Greenhouse gases, Reporting and recordkeeping
requirements.

Dated: December 22, 2011.

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, title 40, Chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 98—[AMENDED]

1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart A—[Amended]

2. Table A-6 to subpart A of part 98 is amended by revising the entries for subpart TT to read as follows:

Table A-6 to Subpart A of Part 98--Data Elements That Are Inputs to Emission Equations and for Which the Reporting Deadline is March 31, 2013

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is March 31, 2013 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2013)
*	* * *	* * *
TT	98.466(a)(2)	All
TT	98.466(a)(3)	Only last year the landfill accepted waste (for closed landfills using Equation TT-4)
TT	98.466(a)(4)	Only capacity of the landfill in metric tons (for closed landfills using Equation TT-4)
TT	98.466(b)(3)	Only fraction of CH ₄ in landfill gas.
TT	98.466(b)(4)	Only the methane correction factor (MCF) value used in the calculations.
TT	98.466(c)(1)	All
TT	98.466(c)(4)(i)	All

Subpart	Rule Citation (40 CFR part 98)	Specific Data Elements for Which Reporting Date is March 31, 2013 ("All" means all data elements in the cited paragraph are not required to be reported until March 31, 2013)
TT	98.466(c)(4)(ii)	All
TT	98.466(c)(4)(iii)	All
TT	98.466(d)(2)	All
TT	98.466(d)(3)	Only degradable organic carbon (DOCx) value used in calculations.
TT	98.466(e)(2)	Only surface area (in square meters) at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type (for facilities using a landfill gas collection system)
TT	98.466(f)	All

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